

Application No. 10/653,110  
Amdt. Dated June 1, 2004  
Reply to Office Action of January 30, 2004

### **REMARKS/ARGUMENTS**

#### **1. Remarks on the Amendments**

Claims 1, 3, 6 and 9-10 have been amended to more specifically define Applicants' claimed invention. Claim 2 has been canceled because it becomes redundant after the amendment of Claim 1. New Claims 11-14 have been added.

Antecedent basis of the amendments and the new claims can be found on canceled claim 2, and Figs. 5-6.

Applicant respectfully submits that no new matter has been added by the amendments of claims.

There are a total of 13 claims pending.

#### **2. Response to the Rejections of Claims 1 and 4-10 Based Upon 35 U.S.C. §102(b)**

Claims 1 and 4-10 stand rejected under 35 USC §102(b) as being anticipated by Cass (US 5,467,738). This rejection is respectfully traversed by the amendments.

Claim 1 is an independent claim. Claims 4-10 are dependent claims of Claim 1.

For there to be anticipation under 35 U.S.C. §102, "each and every element" of the claimed invention must be found either expressly or inherently described in a single prior art reference. *Verdegaal Bros vs. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) and references cited therein. See also *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1581, 230 USPQ 81, 84 (Fed. Cir. 1986) ("Absence from the reference of any claimed element negates anticipation."); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As pointed out by the court, "[t]he

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identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). An anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed and that its existence was recognized by persons of ordinary skill in the field of the invention. *ATD Corp V. Lydall, Inc.*, 159 F.3d 534, 545, 48 USPQ 2d 1321, 1328 (Fed. Cir. 1998). See also *In re Spada*, 911 F.2d 705, 708, 15 USPQ 2d 1655, 1657 (Fed. Cir. 1990).

As positively recited in the amended independent Claim 1, Applicant's claimed a top food container has one side of said top food container indented to provide a void space for a pet to drink water from the bottom water container.

Applicant submits that the claimed subject matter is not disclosed, taught or suggested by the art of record. More specifically, Cass fails to teach Applicant's claimed pet food bowl which has an indented top food container for providing a void space for a pet to drink water from the bottom water container. Therefore, the reference fails to anticipate or suggest Applicant's claimed invention.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claim 1 based upon 35 U.S.C. §102(b).

With regard to Claims 4-10, as described above, these claims are dependent upon independent Claim 1. Under the principles of 35 U.S.C. §112, 4<sup>th</sup> paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claim 1 is not anticipated by the prior art of record, as such Claims 4-10 are submitted as being allowable over the art of record.

In view of the above, Applicant respectfully requests withdrawal of the rejection of Claims 1 and 4-10 based upon 35 U.S.C. §102(b).

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3. Response to the Rejections of Claims Based Upon 35 USC §103(a)

Claims 2-3 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cass in view of O'Donnell (U.S. 1,613,671). This rejection is respectfully traversed by the amendment.

Claim 2 has been canceled, and the claim limitations of canceled claim 2 have been incorporated into Claim 1. New Claim 11 also incorporates claim limitations of canceled claim 2. Therefore, the response in this section addresses the rejection presumably to Claims 1 and 11. Further, Claim 3 independent claim of Claim 1.

A determination under 25 U.S.C. §103 is whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. *In re Mayne*, 104 F.3d 1339, 1341, 41 USPQ 2d 1451, 1453 (Fed. Cir. 1997). An obviousness determination is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and prior art; and (4) the objective evidence of nonobviousness. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), see also *Robotic Vision Sys., Inc. v. View Eng'g Inc.*, 189 F.3d 1370 1376, 51 USPQ 2d 1948, 1953 (Fed. Cir. 1999).

In line with this standard, case law provides that "the consistent criterion for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art." *In re Dow Chem.*, 837 F.2d 469, 473, 5 USPQ 2d 1529, 1531 (Fed. Cir. 1988). The first requirement is that a showing of a suggestion, teaching or motivation to combine the prior art references is an "essential evidentiary component of an obviousness holding." *C.R. Bard, Inc. v. M3 Sys. Inc.*, 157 F.3d 1340, 1352, 48 USPQ 2d 1225, 1232 (Fed. Cir. 1998). This showing must be clear and particular, and broad

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conclusory statements about the teaching of multiple references, standing alone, are not "evidence." *In re Dembiczak*, 175, F.3d 994, 1000, 50 USPQ 2d 1614, 1617. The second requirement is that the ultimate determination of obviousness must be based on a reasonable expectation of success. *In re O'Farrell*, 853 F.2d 894, 903-904, 7 USPQ 2d 1673, 1681 (Fed. Cir. 1988); see also *In re Longi*, 759 F.2d 887, 897, 225 USPQ 645, 651-52 (Fed. Cir. 1985). The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992).

The examiner has the burden of establishing a prima facie case of obviousness. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995). The burden to rebut a rejection of obviousness does not arise until a prima facie case has been established. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993). Only if the burden of the establishing prima facie case is met does the burden of coming forward with rebuttal argument or evidence shift to the application. *In re Deuel*, 51 F.3d 1552, 1557, 34 USPQ 2d 1210, 1214 (Fed. Cir. 1995), see also *Ex parte Obukowicz*, 27 USPQ 2d 1063, 1065 (B.P.A.I. 1992).

Applicant submits that nothing in the art of record teaches or suggests the subject matter positively recited in amended independent Claim 1 and new Claim 11. As recited in Claims 1 and 11, the instant ant-proof pet food bowl has an indented top food container for providing a void space for a pet to drink water from the bottom water container. Furthermore, the top food container resides on top of the central post and above the bottom water container.

As discussed above, Cass' fails to teach an intended top food container for providing a void space for a pet to drink water from the bottom water container, as the Examiner points out the Office Action. The deficiencies of Cass' teaching are not overcome by O'Donell.

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O'Donell teaches an insert saucepan for suspension within a regulation saucepan or other cooking vessel, which has a body portion of reduced cross-section (Lines 34 to 38 of the reference). O'Donell specifically teaches that the insert saucepan has means for receiving and retaining thereat the rim of the cooking vessel, thereby positioning the insert saucepan at varying height within the cooking vessel (Lines 38 to 45 of the reference).

Therefore, O'Donell teaches away from Applicant's claimed invention which has the top food container resided on top of the central post and above the bottom water container, not within the bottom water container.

Furthermore, Applicant respectfully points out that Cass' and O'Donell's devices are not combinable. O'Donell emphasizes that an object of his invention is to provide an improved saucepan for suspending the insert saucepan within the outer saucepan in proper heating relation therewith (Lines 4-11). To obtain proper heating through the outer saucepan, O'Donell's insert saucepan has to be within the outer pan, not above the outer pan. If one replaces Cass' upper dish with the O'Donell's insert saucepan, as suggested by the Examiner, the intent of O'Donell's invention would be destroyed, because the insert saucepan would no longer be within the other container to obtain heating. Therefore, based on the conflicting structures of the references' devices, one skilled in the art would not be motivated to combine the prior art.

Moreover, Applicant submits that it is further improper to combine Cass' and O'Donell's references, because the two references are in non-related fields. More specifically, Cass's ant-free pet dishes is in Class 119, while O'Donell's saucepan is in Class 220. One ordinary skilled in the art in the field of pet supply would not have motivation to look for improvement in a totally different field of cooking utensil.

Accordingly, Applicant maintains that the claimed invention is unobvious in view of the prior art of record.

With regard to Claim 3, as described above, it is dependent upon

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independent Claim 1. Under the principles of 35 U.S.C. §112, 4<sup>th</sup> paragraph, all of the limitations of each independent claim are recited in its respective dependent claims. As described above, independent Claim 1 unobvious in view of the prior art of record, as such Claim 3 is submitted as being allowable over the art of record.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claim 1, 3 and 11 based upon 35 U.S.C. §103(a).

It is respectfully submitted that Claims 1 and 3-14, the pending claims, are now in condition for allowance and such action is respectfully requested. Applicant's Agent respectfully requests direct telephone communication from the Examiner with a view toward any further action deemed necessary to place the application in final condition for allowance.

6/1/2004  
Date of Signature

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